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Before the

Federal Communications Commission

Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Interconnection and Resale	)	CC Docket No. 94-54
Obligations Pertaining to	)	
Commercial Mobile Radio Services	)	
	)	
Automatic Roaming Proposals	)	DA 97-2558
for Cellular, Broadband PCS,	)	
and Covered SMR Networks	)	

SUPPLEMENTAL COMMENTS OF AIRTOUCH COMMUNICATIONS, INC.

AIRTOUCH COMMUNICATIONS, INC.

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SUPPLEMENTAL COMMENTS OF AIRTOUCH COMMUNICATIONS, INC.

AirTouch Communications, Inc. ("AirTouch") below responds to the Commission's request for supplemental comments concerning whether there is a need for new government regulations regarding automatic roaming.[1]

INTRODUCTION AND SUMMARY

The issue in this proceeding is *not* whether any consumers will be deprived of the ability to roam when they travel to areas outside the licensed serving area of their CMRS provider. The Commission ensured the universal availability of roaming by adopting last year a manual roaming requirement.[2] The issue rather is whether the Commission will begin to require

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1 *See Public Notice,* "Commission Seeks Additional Comment on Automatic Roaming Proposals for Cellular, Broadband PCS, and Covered SMR Networks, DA 97-2559 (Dec. 5, 1997). *See also Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services,* CC Docket No. 94-54, *Third Notice of Proposed Rulemaking,* 11 FCC Rcd 9471 (1996)("*Automatic Roaming NPRM*").

2 *See Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services,* CC Docket No. 94-54, *Second Report and Order,* 11 FCC Rcd 9462 (1996) ("*Manual Roaming Order*").

CMRS providers to execute automatic roaming billing contracts with each other (including with direct competitors) and, if so, begin to regulate the details of these inter-carrier agreements. The Commission has not regulated such inter-carrier arrangements in the past, and there is no reason for it to begin such regulation now that the CMRS market is more competitive than ever.

The Commission has noted that the adoption of automatic roaming regulations would be "inconsistent with our general policy of allowing market forces, rather than regulation, to shape the development of wireless services."[3] In this regard, both Congress and the Commission have made clear that new regulations should be imposed on the competitive CMRS industry only upon a demonstration of a clear cut need for the regulation.

It cannot be demonstrated that there is a clear cut need for new automatic roaming regulations. Inter-carrier automatic roaming agreements developed at a time when there were only two broadband CMRS providers in each market. Moreover, vigorous competition between these two carriers developed despite the fact that one carrier often had a so-called "head start" over its competitor — and despite the absence of an automatic roaming requirement.

Importantly, this competition and these automatic roaming arrangements nonetheless developed throughout the country — *without* government intervention — because of the convergence of business, economic, and market considerations. Now, there are five operational broadband CMRS providers in most markets (two cellular, two PCS, and one enhanced SMR); soon there will be additional CMRS systems as the C, D, E, and F block PCS licensees build out their networks. If automatic roaming regulations were unnecessary in the

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3 *Automatic Roaming NPRM*, 11 FCC Rcd at 9477 ¶ 27.

past, such regulations are clearly unnecessary today as the CMRS market is even more competitive and is rapidly becoming intensely competitive.

However, and regardless of whether the Commission imposes a general automatic roaming requirement, under no circumstances should it require any CMRS provider to enter into such agreements with competitors operating in the same market. Roaming was designed to accommodate carriers wanting to provide service in markets where they do not hold a license. Facilities-based competitors are not "roaming" when offering service in their *own* licensed service area; they are simply relying on a competitor's network to provide service in lieu of constructing their own network. Moreover, the Commission has already addressed any obstacles newer entrants may face during the initial build-out phase of their network by requiring incumbent carriers to allow their competitors to resell their service.

Not only would an extension of an automatic roaming requirement to in-market competitors be unnecessary, it would also be contrary to the public interest. Requiring direct, in-market competitors to enter into automatic roaming/billing contracts with each other will, among other things, severely distort competition and harm consumers; and will provide a disincentive for newer CMRS providers to invest and expand their networks to provide competitive services. Moreover, as AirTouch explains below, extending an automatic roaming requirement to in-market competitors would give CMRS providers the ability to harm their competitors — by causing the quality of their competitors' service to deteriorate and by forcing their competitors to expend capital to construct additional capacity that will become stranded. No carrier should be forced by government fiat to give this kind of advantage to its competitors.

DISCUSSION

I. The Marketplace is Working and Therefore Government Intervention is Unnecessary

Both Congress and the Commission have a adopted the policy of allowing market forces rather than regulation to shape the development of the CMRS industry. This market-orientated policy has been a phenomenal success. Unconstrained by government regulations, CMRS providers in their brief history have developed a vast array of products and services now used by over 50 million Americans. Importantly, the intense competition in the CMRS industry occurred despite the fact that, for a temporary period of time, one CMRS provider had a so-called "head start" over other providers. Equally important, "[a]dvancements in roaming occurred without a Commission rule or regulation requiring cellular carriers to enter into automatic roaming agreements with each other."[4]

There is, therefore, no record support for the theory that automatic roaming rules are suddenly necessary now that the CMRS market is *more* competitive — with all CMRS providers having a greater choice in the number of carriers with which they may execute automatic roaming agreements. In any event, automatic roaming contracts executed between CMRS providers are not subject to the Commission's Title II, common carrier jurisdiction.

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[4] Statement of Commissioner Rachelle B. Chong, CC Docket No. 94-54, 11 FCC Rcd at 9498 (1996).

A. Congress and the Commission Have Concluded That the CMRS Industry Should Be Governed by Market Forces, and There Is No Reason For Imposing Government Rules Mandating That CMRS Providers Execute Automatic Roaming Contracts With Each Other

Congress made clear in both the Omnibus Budget Reconciliation Act of 1993 ("1993 Act") and the Telecommunications Act of 1996 ("1996 Act") that it expects the Commission to reduce regulations on the CMRS industry, not impose new regulations which were unnecessary even when the market was less competitive. Accordingly, the Commission declared that new CMRS regulations should not be imposed "unless clearly warranted."[5]

Congress adopted the 1993 Act because it found that regulation can impair the benefits of competition. Concerned that past regulation of different mobile services inhibited vigorous and unfettered competition, Congress found it necessary to reclassify all mobile services to ensure regulatory parity.[6] It further decided that "traditional regulation" was no longer appropriate for the competitive CMRS industry.[7] Congress therefore preempted states from regulating CMRS rates and entry, and it also gave the Commission express forbearance powers to remove unnecessary and costly regulations for the competitive CMRS industry.[8] As

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5 *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, *First Report and Order,* 11 FCC Rcd 18455, 18463 ¶ 14 (1996) ("*CMRS Resale Order*").

6 *See Implementation of Sections 3(n) and 332 of the Communications Act,* GN Docket No. 93-252, *Second Report and Order,* 9 FCC Rcd 1411, 1418 ¶ 13 (1994)("*Second CMRS Order*").

7 *Id.* at 1417 ¶ 12.

8 *Id.* at 1418 ¶ 14.

the Commission has noted, Congress expected regulation only upon a demonstration of "a clear cut need":

> [T]he statutory plan [in the 1993 Act] is clear. Congress envisioned an economically vibrant and competitive market for CMRS services. Congress delineated its preference for allowing this emerging market to develop subject to *only as much regulation* for which the Commission and the states could *demonstrate a clear cut need.* * * * Congress also articulated . . . [that] success in the marketplace will not be determined by regulatory strategies but by technological innovation, service quality, competition-based pricing decisions, and responsiveness to consumer needs.[9]

In exercising its new forbearance powers, the Commission, among other things, determined that it was no longer necessary for CMRS providers to file their inter-carrier contracts because "[c]ompetitive market forces will ensure that inter-carrier contracts will not be used to harm consumers."[10]

Similarly, Congress enacted the 1996 Act as a means to "provide for a pro-competitive, *de-regulatory* national policy framework . . . by opening all telecommunications markets to competition."[11] Congress imposed minimal requirements on CMRS providers; fewer,

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9 *Connecticut CMRS Rate Regulation Petition,* 10 FCC Rcd 7025, 7031 ¶¶ 9-10 (1995) (emphasis added), *aff'd, Connecticut Dept. of Public Utility Control v. FCC*, 78 F.3d 842 (2d Cir. 1996). *See also Second CMRS Order,* 9 FCC Rcd at 1418 ¶ 15("[I]n striving to adopt an appropriate level of regulation for CMRS providers, we establish, as a principal objective, the goal of ensuring that unwarranted regulatory burdens are not imposed upon any mobile radio licensees who are classified as CMRS providers .").

10 *Second CMRS Order,* 9 FCC Rcd at 1480 ¶ 181.

11 S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996)(emphasis added).

for example, than it imposed on competitive local exchange carriers.[12] In fact, Congress *removed* some regulations imposed on certain CMRS providers.[13]

Consistent with these directives, the Commission has adopted the "policy of allowing market forces, rather than regulation, to shape the development of" the CMRS market.[14] The Commission has ruled that new CMRS regulations should not be imposed "unless clearly warranted" and that any new regulations must be "narrowly tailored" because "regulation necessarily implicates costs."[15]

It is clear that new government regulations which would require CMRS providers to execute automatic roaming contracts with each other would be at odds with the Congressional and Commission policy of allowing market forces to shape the development of the CMRS industry. New automatic roaming regulations are not "clearly warranted." In fact, record evidence demonstrates that new regulations would be clearly unnecessary. In the cellular context, robust competition and wide scale automatic roaming arrangements developed in the absence of such an obligation — even though one carrier often had a temporary "head start" over other carriers. Government intervention clearly cannot be warranted now that the CMRS market is *more* intensely competitive.

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12 For example, CMRS providers are not subject to the requirements imposed by Section 251(b) on competitive LECs. *See First Local Competition Order,* 11 FCC Rcd 15449, 15996 ¶ 1006 (1996), *rev'd in part on other grounds, Iowa Utilities Board* v. *FCC,* 120 F.3d 573 (8th Cir. 1997), *petition for cert. filed.*

13 Among other things, Congress eliminated an equal access requirement and liberalized the BOC cellular structural separation rule. *See* 47 U.S.C. § § 332(c)(8) and Section 601(d) of the 1996 Act.

14 *Automatic Roaming NPRM,* 11 FCC Rcd at 9477 ¶ 26.

15 *CMRS Resale Order,* 11 FCC Rcd at 18463 ¶ 14.

Moreover, the Commission has held that new CMRS regulations are inappropriate if their costs exceed their estimated benefits.[16] Thus, even if proponents of new government regulations had documented a "clear cut need" for mandating automatic roaming, the record evidence in this proceeding establishes conclusively that the costs of new regulations — distortion of market forces, harm to consumers, costs of implementing the regulations, technical issues associated with number portability, and exacerbation of the fraud problem — would far exceed the purported benefits of such regulation.[17]

B. Inter-Carrier Automatic Roaming Contracts Are Not Subject to the Commission's Title II Common Carrier Jurisdiction

Ordinarily, the Commission regulates CMRS providers and other telecommunications carriers pursuant to its authority under Title II of the Communications Act.[18] To exercise such authority, however, the activity in question must be a telecommunications service offered on a common carrier basis.[19] AirTouch submits that inter-carrier automatic

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16 *See, e.g., Automatic Roaming NPRM,* 11 FCC Rcd 9473 ¶ 18; *CMRS Resale Order,* 11 FCC Rcd at 18463 ¶ 14.

17 *See* Comments filed in CC Docket No. 94-54 on October 4, 1996 by AirTouch, Ameritech, AT&T Wireless, Bell Atlantic NYNEX Mobile, BellSouth, CTIA, Century Cellunet, GTE Mobilnet, PCS PrimeCo, Rural Cellular Association, Rural Telecommunications Group, Southwestern Bell Mobile Systems, Sprint Spectrum, 360 Communications, and Vanguard Cellular.

18 *See* 47 U.S.C. §§ 201 *et seq.*

19 *See, e.g., Detariffing of Billing and Collection Services,* 102 F.C.C.2d 1150, 1168 ¶ 31 (1985), *aff'd,* 1 FCC Rcd 445 (1986)("*Billing and Collection Order*")("Two distinct questions must be asked in order to determine whether a particular activity is subject to such Title II regulation. Is the activity an interstate or foreign communications service? Is the person or entity offering the service as a common carrier?").

roaming contracts are not a communications service and, in any event, are not entered into on a common carrier basis.

There is a substantial question whether inter-carrier automatic roaming arrangements constitute a communications service. Unlike manual roaming, which involves a direct relationship between a carrier and the person using the carrier's network,[20] automatic roaming involves a billing contract executed between two CMRS providers. The Commission has held repeatedly that "carrier billing or collection for the offering of another unaffiliated carrier is not a communications service for purposes of Title II of the Communications Act" and is rather "a financial and administrative service" subject only to its limited, ancillary authority under Title I of the Communications Act.[21]

With automatic roaming, the carrier providing the communications service (the "providing" carrier) no longer bills the person making the call; instead, it enters into a contractual arrangement with the end user's primary carrier (the "home" carrier) where the providing carrier's communications services are paid for by the home carrier — thereby

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[20] Although manual roaming differs from most communications services — in that the end user wanting to place a call over a particular CMRS network "has no direct pre-existing service or financial arrangement" with the CMRS provider — the FCC has held that manual roaming constitutes a telecommunications service. *CMRS Manual Roaming Order,* 11 FCC Rcd at 9464 ¶ 3 and 9469 ¶ 10. It is clear that the FCC's decision on this point was limited to manual roaming, the FCC rejecting the argument that manual roaming was a "billing arrangement provided by cellular carriers to *cellular subscribers* they are obliged to serve." BellSouth Reply Comments at 15 (emphasis added), *cited in Manual Roaming Order,* 11 FCC Rcd at 9469 n.28.

[21] *Detariffing of Billing and Collection Services,* 102 F.C.C.2d 1150, 1168 ¶¶ 31-32 (1985), *aff'd,* 1 FCC Rcd 445 (1986)("*LEC Billing and Collection Order*"). The Commission has uniformly applied its *Billing and Collection Order* in a wide variety of circumstances. *See, e.g., AT&T 900 Dial-It Services,* 4 FCC Rcd 3429 (1989); *AT&T Shared EPSCS Order,* 2 FCC Rcd 24 (1986).

relieving the providing carrier of the responsibility of billing the home carrier's customers directly. The home carrier then independently determines whether and what to bill its customers. The home carrier need not bill its customers the roaming charge of the providing carrier, and it may decide either to "buy-down" these charges or increase them. The automatic roaming service is effectively provided by the home carrier, with the providing carrier acting under subcontract to the home carrier.

Automatic roaming contracts executed between two CMRS providers are thus billing contracts subject only to the Commission's limited Title I authority. The Commission's imposition of an automatic roaming requirement in this rulemaking would *require, for the first time,* providing carriers to enter into billing arrangements and contracts with third-party carriers. This step would be unprecedented given the Commission's determination that the billing contracts of even monopoly carriers need not be regulated.[22]

Moreover, whether or not inter-carrier roaming contracts are deemed to be a communications service, the fact remains that such contracts have not been offered or executed

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22 *See LEC Billing and Collection Order,* 102 F.C.C.2d 1150 (1985), *aff'd,* 1 FCC Rcd 445 (1986).

on a common carrier basis.[23] Courts have held that the *sine qua non* of common carriage is that "one must hold oneself out indiscriminately to the clientele one is suited to serve":

> But a carrier will not be a common carrier where its practice is to make individualized decisions, in particular cases, whether and on what terms to deal.[24]

Courts have further held that the Commission has limited discretion in determining whether or not a particular activity is undertaken on a common carrier basis.[25]

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[23] In order to regulate an activity under Title II of the Communications Act, the Commission must first determine whether the telecommunications service at question is being offered on a common carrier basis. *Southwestern Bell Telephone* v. *FCC,* 19 F.3d 1475, 1484 (D.C. Cir. 1994). It is now settled that "one can be a common carrier with regard to some activities, but not others." *Id.* at 1481, *quoting, NARUC II,* 538 F.2d at 608. The 1996 Act also "recognizes the distinction between common carrier offering that are provided to the public . . . and private services." H.R. Conf. Rep. No. 104-458 at 116 (1996). *See generally Cable & Wireless Cable Landing License*, 12 FCC Rcd 8516, 8521 ¶ 13 (1997).

[24] *National Association of Regulatory Utility Comm'rs* v. *FCC,* 525 F.2d 630, 641 (D.C. Cir. 1975), *cert. denied,* 425 U.S. 992 (1976)("*NARUC I*"). *See also Southwestern Bell* Telephone v. *FCC,* 19 F.3d 1475, 1480 (D.C. Cir. 1994), *quoting National Association of Regulatory Utility Comm'rs* v. *FCC*, 533 F.2d 601, 608-09 (D.C. Cir. 1976)("*NARUC II*")("[T]he primary *sine qua non* of common carrier status is a quasi-public character which arises out of the undertaking to carry for all people indifferently."); *Wold Communications* v. *FCC,* 735 F.2d 1465, 1471 n.10 (D.C. Cir. 1983); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Fourth Order on Reconsideration*, FCC 97-420, at 100 ¶ 187 (Dec. 30, 1997).

[25] *See NARUC I,* 525 F.2d at 644 ("[W]e reject those parts of the [FCC] Orders which imply an unfettered discretion in the Commission to confer or not confer common carrier status on a given entity, depending upon the regulatory goals it seeks to achieve. The common law definition of common carrier is sufficiently definite as not to admit of agency discretion in the classification of operating communications entities. A particular system is a common carrier by virtue of its functions, rather than because it is declared to be so.").

Because for valid business reasons the CMRS industry has not entered into inter-carrier automatic roaming contracts on a common carrier basis, the Commission may not exercise Title II, common carrier regulation over such activities.[26] Indeed, this rulemaking — examining whether and, if so, how to regulate automatic roaming — would have been unnecessary if inter-carrier roaming contracts were, in fact, common carrier activity.

II. Facilities-Based Competitors Are Not "Roaming" When Offering Service In-Market

The Commission has asked whether "carriers should be permitted to refuse to enter into automatic roaming agreements with other facilities-based carriers in their market."[27] The FCC should not require a carrier to enter into a "roaming" agreement with its direct competitors. In fact, it is a misnomer even to characterize such an arrangement as "roaming."

The concept of roaming has been limited to the service a customer receives when "visiting in another market."[28] In establishing its cellular roaming rules over 15 years ago, the

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26 That inter-carrier billing contracts instead fall within the FCC's ancillary Title I jurisdiction does not deprive the FCC from regulating the activity. However, the FCC has held that the exercise of its ancillary, Title I jurisdiction "requires a record finding that such regulation would 'be directed at protecting or promoting a statutory purpose.'" *LEC Billing and Collection Order,* 102 F.C.C.2d at 1170 ¶ 37. Put another way, the FCC has held that it may regulate billing and collection arrangements between carriers only if there is a "compelling reason" to do so. *AT&T 900 Dial-It Services,* 4 FCC Rcd 3429, 3433 ¶ 34 (1989). Given the FCC's determination that it was unnecessary to regulate the billing contracts executed by monopoly carriers, there clearly is no need, much less a "compelling reason," to regulate the billing contracts executed by competitive CMRS providers.

27 *Automatic Roaming NPRM,* 11 FCC Rcd at 9476 ¶ 23.

28 *Metromedia,* 7 FCC Rcd 714, 716 n.1 (1992) ("A subscriber to one cellular system who is visiting in another market is said to be 'roaming.'"); *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services,* CC Docket No. 94-54, *Notice of Inquiry,* 9 FCC Rcd 5408, 5416 n.32 (1994) ("Roaming capability permits cellular subscribers to originate or receive calls when using their cellular telephones

Commission drew a sharp distinction between "local and roaming" cellular users.[29] The Commission has not expanded the manual roaming requirement to cover a facilities-based carrier providing service to its in-market competitors.[30] Roaming thus does not encompass the situation where a facilities-based carrier wishes to offer in-market service over a competitor's facilities. Indeed, in such a situation a carrier is deciding to rely on its competitor's facilities in lieu of constructing its own facilities.

However, whatever the merits of a mandatory manual "home roaming" requirement, there is no reason for the Commission to impose a mandatory automatic "home roaming" requirement because a facilities-based competitor is not "roaming" outside of its home market when it seeks to access the facilities of an in-market competitor. To the extent a newer entrant has certain holes in its coverage area during initial build out, it can engage in manual roaming or resale.[31]

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outside of the cellular carrier's license area.").

29 *Cellular Communications Systems, Report and Order*, 86 F.C.C.2d 469, 502 ¶ 75 (1981). *See also id.* at 503 ¶ 79 ("[W]e expressly stated that a cellular subscriber traveling *outside his or her local service area* should be able to communicate over a cellular system in another city) (emphasis added); *Cellular Communications Systems, Notice of Proposed Rulemaking*, 78 F.C.C.2d 984, 997 ¶ 37 (1980).

30 *See, e.g., Baton Rouge MSA Limited Partnership*, 6 FCC Rcd 5948 (1991), *aff'd*, 8 FCC Rcd 2889 (1993)(cellular carrier required to provide manual roaming to an in-market competitor in an extension area but not in its home market). *See also Cellular Communications Systems, Order on Reconsideration*, 89 F.C.C.2d 58, 63 ¶ 10 (1982)(FCC refuses to require joint construction because systems "with identical or nearly identical cell patterns could well result in less meaningful facilities-based competition than would be possible with two independently designed systems."); *Cellular A/B Switch Order*, 59 R.R.2d 209 (1985) (FCC refused to require that handsets be manually switchable by customers between the A and B frequency blocks).

31 *See CMRS Resale Order,* 11 FCC Rcd 18455 (1996).

There are, moreover, numerous reasons why extending the definition of "roaming" to encompass in-market facilities-based competitors would be contrary to the public interest. In the first place, such a requirement would distort competition by preventing carriers from competing fully with each other. Carriers compete on many factors, including price, quality of service, security, customer service, service options, and coverage. An in-market "roaming" rule would have the practical effect of eliminating coverage as a basis for competition.

Consumers would also be harmed. A carrier with a smaller footprint than its competitors must offer greater value to the public — whether lower prices, better call quality, or more features. If carriers were free to use the facilities of their competitors, they may be less inclined to find ways to provide consumers with a greater value.

Further, if the Commission were to eliminate coverage as a basis for competition, it would also remove the incentive of new licensees to build out their systems rapidly. As even the proponents of new regulations concede, the public's interest is served by the rapid and extensive construction of facilities-based networks:

> The more quickly PCS networks are built out, the sooner PCS will be in a position to compete vigorously and to achieve the Commission's ultimate goals of lower prices and higher quality services.[32]

This consideration is important because PCS licensees do not have the same incentive to build out and expand their networks as did cellular carriers. Cellular carriers had a strong incentive to expand their systems as quickly as possible because they would lose their

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32 Western Wireless Comments, CC Docket No. 94-54, at 12 (Oct. 4, 1996).

ability to serve unserved areas within their licensed areas five years after receiving their licenses.[33] PCS licensees, in contrast, face minimal requirements to retain their larger serving areas. In fact, the current five-year PCS build-out rule — coverage of one-quarter or one-third of the population in their licensed area within five years[34] — is at a level that most PCS licensees are able to meet at the time they commence service to the public.[35] PCS licensees obviously would have no near-term incentive to spend resources and expand their systems if they can instead rely on the networks built by their competitors.

Allowing new facilities-based competitors to have unfettered access to the networks of incumbents would also have the perverse effect of allowing carriers to control the network and service quality of their competitors — to their own advantage. Incumbents have constructed and sized their networks in outlying areas to meet the demands of their customers. If incumbents were suddenly required to allow their competitors' customers to "roam" in these areas on demand, they may very well be required to devote capital to increase capacity *solely* to facilitate the offering of service by the competitors. Even with such investment, service quality to all customers could well diminish based on capacity issues. Further, the extra capacity developed could become unexpectedly and uneconomically stranded when the incumbent's competitors decided — *at their option* — to extend their own networks to these same areas.

For example, assume a newer entrant intends to expand its network to a new area. Shortly before its own network becomes operational, it could begin a large promotion to

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33 *See* 47 C.F.R. § 22.947.

34 *See* 47 C.F.R. § 24.203(a) and (b).

35 For this reason, even a new automatic roaming rule which would sunset in five years would not be sufficiently narrowly tailored to prevent abuse.

stimulate usage in the area — usage which would temporarily traverse the incumbent's network. The incumbent would be forced either to expand the capacity of its network (resulting in stranded investment) or to allow the quality of its services (including services to its own customers) to deteriorate — which the new entrant will invariably use to its own advantage when its own network becomes operational. No carrier should be forced by government fiat to give this kind of advantage to its competitors.

Finally, AirTouch notes that from a competitive perspective, mandating automatic roaming to an in-market competitor is fundamentally different than requiring unrestricted resale. With resale, a facilities-based carrier can require minimum levels of usage (allowing it to plan the use of its network) and can impose significant early termination penalties.[36] These business restrictions are difficult to include in automatic roaming agreements.

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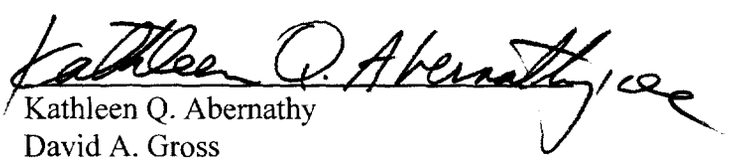
36 *See CMRS Resale Order,* 11 FCC Rcd at 18463 ¶ 13.

CONCLUSION

For the reasons discussed herein, the Commission should decline to promulgate new automatic roaming regulations. Further, under no circumstances should the Commission conclude that *in-market* competitors are engaged in roaming.

Respectfully submitted,

AIRTOUCH COMMUNICATIONS, INC.



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